

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MUCHMORE'S CAFE, LLC,

Civil Action No. 14-cv-5668 RRM-RER

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

**AFFIDAVIT OF
PETER MUTINO**

X

PETER MUTINO, being duly sworn, deposes and states the following:

1. I am not a party to this action. I am a stand up comedian residing in the borough of Manhattan.
2. I submit this Affidavit in support of the application of Muchmore's Cafe, LLC ("Muchmore's") for a judgment declaring the New York City Cabaret Law to be unconstitutional.
3. For approximately two years, I have organized a monthly stand up comedy show at Muchmore's.¹ The event is free and open to the public. Each month, I and a number of other comedians perform stand up comedy at Muchmore's, which is one of very few establishments in Brooklyn where we can ply our art.
4. I have been informed that under the law, a cabaret is "Any room, place or space in the city in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business..." I also understand that only a fraction of a percent of restaurants in New York City possess a Cabaret License.
5. I am not personally aware of any establishments in New York City that regularly host stand up comedy without selling food or drinks for financial support. I am not certain which, if any, of the establishments that regularly host stand up comedy events possess a Cabaret License, but I do know

¹ Ironically, the name of the comedy show is Run From the Police. While I do not actually condone running from the police, the irreverent title taps into a suspicion of authority common among comedians and other performers, which I believe is largely attributable to unjustifiable policing tactics such as the purported criminalization of singing, dancing and other forms of amusement.

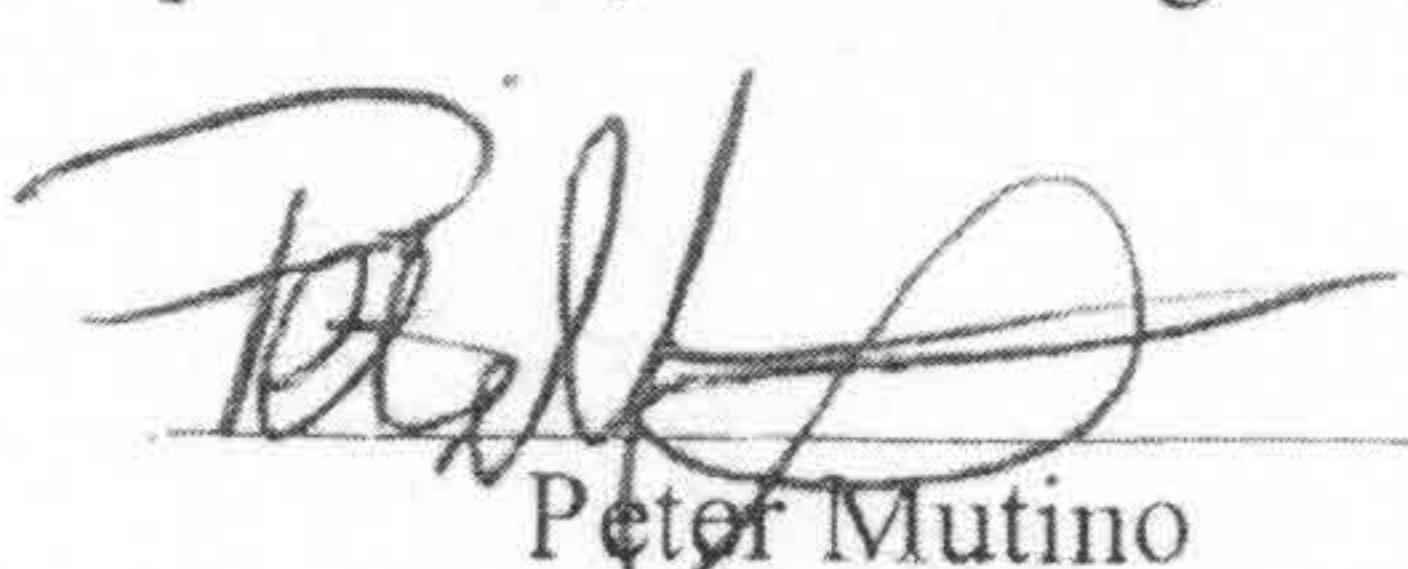
that there are only a very limited number of locations in the City that are willing to host stand up comedy, particularly outside of Manhattan.

5. Thankfully, I am not a lawyer, and do not know whether stand up comedy is considered an "other form of amusement" under the definition above. However, based on my understanding of the term, anything that amuses someone could be considered an "other form of amusement", and the whole point of comedy is to amuse people. Without some clear definition on what constitutes an illegal "other form of amusement", it seems that almost anything that happens in a restaurant could be considered illegal aside from joylessly eating food. In fact, if someone were to read this very Affidavit in a restaurant and crack a smile, I see no clear reason why this would not be an illegal "form of amusement".

6. I have no idea how to tell what is permitted under this law. If amusement is to be illegal, the City should crack down on every form of smiling, dancing, singing, laughing, reading, playing, joking, shenanigans, teasing, tomfoolery, high jinks, antics, horseplay, carrying-on, or "other form of amusement". Otherwise, this Court should clarify the extent to which I, as a United States citizen, am allowed to smile or tell a joke in a restaurant without it being illegal.

7. As a comedian, I appreciate absurdity, but the degree of absurdity presented here is like something out of a Kafka novel. I find it particularly not funny that a law passed in 1926 with the purpose of preventing white people from dancing and socializing with black people still exists and can be used to shutter establishments that host music or "other forms of amusement".

8. I fully support Muchmore's efforts to challenge this antiquated law. If the Court finds that Muchmore's cannot assert the First Amendment rights of people such as me that perform on its premises, I would agree to being added as plaintiff to address these issues.



Peter Mutino

CERTIFICATE FILED IN
ALBANY, BROOKLYN, KINGS,
NEW YORK, ORANGE, PUTNAM,
QUEENS, RICHMOND, ROCKLAND,
SUFFOLK, AND WESTCHESTER
COUNTIES

STATE OF NEW YORK
COUNTY OF NEW YORK
Sworn to before me this
15 day of May 2015

DAVID HELMAN
Notary Public - State of New York
No. 01-HE6107875
Qualified in Nassau County
My Commission Expires April 12, 2016

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